# Health Benefits Under the Consolidated Omnibus Budget Reconciliation Act (COBRA)

U.S. Department of Labor
Pension and Welfare Benefits Administration

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Health insurance programs allow workers and their families to take care of essential medical needs. These programs can be one of the most important benefits provided by an employer.

There was a time when group health coverage was at risk when a worker lost his job, changed employment, or got divorced. That changed in 1986 with the passage of health benefit provisions in the Consolidated Omnibus Budget Reconciliation Act **(COBRA)**. Now, terminated employees or their families who may lose coverage because of termination of employment, death, divorce, or other life events may be able to continue the coverage under the employer's group health plan for themselves and their families for limited periods of time.

If you are eligible for COBRA coverage, your health plan must give you a notice stating your right to choose to continue coverage under the plan. You will have at least 60 days to choose COBRA coverage or lose all rights to benefits. Once COBRA coverage is chosen, **you may be required to pay for the coverage.**

This booklet is designed to:

- Provide a general explanation of COBRA requirements
- Outline the rules that apply to health plans for employees in the private sector
- Highlight your rights to benefits under this law.

## What Is the Continuation Health Law?

Congress passed the landmark Consolidated Omnibus Budget Reconciliation Act (**COBRA**)[1] health benefit provisions in 1986. The law amends the Employee Retirement Income Security Act (ERISA), the Internal Revenue Code and the Public Health Service Act to provide continuation of group health coverage that otherwise might be terminated.

COBRA contains provisions giving certain former employees, retirees, spouses former spouses, and dependent children the right to temporary continuation of health coverage at group rates. This coverage, however, is only available when coverage is lost due to certain specific events. Group health coverage for COBRA participants is usually more expensive than health coverage for active employees, since usually the employer pays a part of the premium for active employees while COBRA participants generally pay the entire premium themselves. It is ordinarily less expensive, though, than individual health coverage.

The law generally covers group health plans maintained by employers with 20 or more employees in the prior year. It applies to plans in the private sector and those sponsored by state and local governments.[2] The law does not, however, apply to plans sponsored by the Federal government and certain church-related organizations.

Group health plans sponsored by private-sector employers generally are welfare benefit plans governed by ERISA and subject to its requirements for reporting and disclosure, fiduciary standards and enforcement. ERISA neither establishes minimum standards or benefit eligibility for welfare plans nor mandates the type or level of benefits offered to plan participants. It does,

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[1] The original health continuation provisions were contained in Title X of COBRA, which was signed into law (Public Law 99-272) on April 7, 1986.

[2] Provisions of COBRA covering state and local government plans are administered by the Department of Health and Human Services.

however, require that these plans have rules outlining how workers become entitled to benefits.

Under COBRA, a group health plan ordinarily is defined as a plan that provides medical benefits for the employer's own employees and their dependents through insurance or another mechanism such as a trust, health maintenance organization, self-funded pay-as-you-go basis, reimbursement or combination of these. Medical benefits provided under the terms of the plan and available to COBRA beneficiaries may include:

- Inpatient and outpatient hospital care
- Physician care
- Surgery and other major medical benefits
- Prescription drugs
- Any other medical benefits, such as dental and vision care.

Life insurance, however, is not covered under COBRA.

## Alternatives to COBRA Coverage

In deciding whether to elect COBRA continuation coverage, you should consider all your health care options. For example, one valuable option that may be available is "special enrollment" in a spouse's plan, if requested within 30 days of the loss of your health coverage. This option is provided by the Health Insurance Portability and Accountability Act. In addition, individuals in a family may be eligible for health insurance coverage through various state programs. For more information contact your state department of insurance.

## Who Is Entitled to Benefits?

There are three elements to qualifying for COBRA benefits. COBRA establishes specific criteria for plans, qualified beneficiaries, and qualifying events.

### Plan Coverage

Group health plans for employers with 20 or more employees on more than 50 percent of its typical business days in the previous calendar year are subject to COBRA. Both full- and part-time employees are counted to determine whether a plan is subject to COBRA. Each part-time employee counts as a fraction of an employee, with the fraction equal to the number of hours that the part-time employee worked divided by the hours an employee must work to be considered full-time.

### Qualified Beneficiaries

A qualified beneficiary generally is an individual covered by a group health plan on the day before a qualifying event who is either an employee, the employee's spouse, or an employee's dependent child. In certain cases, a retired employee, the retired employee's spouse, and the retired employee's dependent children may be qualified beneficiaries. In addition, any child born to or placed for adoption with a covered employee during the period of COBRA coverage is considered a qualified beneficiary. Agents, independent contractors, and directors who participate in the group health plan may also be qualified beneficiaries.

### Qualifying Events

"Qualifying events" are certain events that would cause an individual to lose health coverage. The type of qualifying event will determine who the qualified beneficiaries are and the amount of time that a plan must offer the health coverage to them under COBRA. A plan, at its discretion, may provide longer periods of continuation coverage.

The qualifying events for **employees** are:

- Voluntary or involuntary termination of employment for reasons other than "gross misconduct"
- Reduction in the number of hours of employment

The qualifying events for **spouses** are:

- Voluntary or involuntary termination of the covered employee's employment for any reason other than "gross misconduct"
- Reduction in the hours worked by the covered employee
- Covered employee's becoming entitled to Medicare
- Divorce or legal separation of the covered employee
- Death of the covered employee

The qualifying events for **dependent children** are the same as for the spouse with one addition:

- Loss of "dependent child" status under the plan rules

| | PERIODS OF |
|---|---|
| **Qualifying Events** | |
| Termination | |
| Reduced hours | |
| Employee enrolled in Medicare | |
| Divorce or legal separation | |
| Death of covered employee | |
| Loss of "dependent child" status | |

[3] The Omnibus Budget Reconciliation Act of 1986 contained amendments to the Internal Revenue Code and ERISA affecting retirees and family members who receive post-retirement health coverage from employers involved in bankruptcy proceedings begun on or after July 1, 1986. This booklet does not address that group.

## COVERAGE [3]

| Beneficiary | Coverage |
|---|---|
| Employee<br>Spouse<br>Dependent child | 18 months [4] |
| Spouse<br>Dependent child | 36 months |
| Dependent child | 36 months |

[4] In the case of individuals who are disabled within the meaning of the "Social Security Act," special rules may apply to extend coverage an additional 11 months to that individual and other individuals who are qualified beneficiaries with respect to the same qualifying event. (See page 13 of this publication for more information.)

## Your Rights: Notice and Election Procedures

COBRA outlines how employees and family members may elect continuation coverage. It also requires employers and plans to notify qualified beneficiaries.

### Notice Procedures

General COBRA rights must be described in the summary plan description (SPD) that all participants receive. ERISA requires employers to furnish modified and updated SPDs containing certain plan information and summaries of material changes in plan requirements. Plan administrators must automatically furnish the SPD 90 days after a person becomes a participant or a beneficiary begins receiving benefits or within 120 days after the plan is first subject to the reporting and disclosure provisions of ERISA.

***Initial Notices***

Generally, an initial notice describing COBRA rights must be furnished to covered employees and their spouses at the time coverage under the plan commences.

***Other Notices***

These notice requirements are triggered for employers, qualified beneficiaries and plan administrators when a qualifying event occurs. Employers must notify plan administrators of a qualifying event within 30 days after an employee's death, termination, reduced hours of employment or entitlement to Medicare.

A qualified beneficiary must notify the plan administrator of a qualifying event within 60 days after divorce or legal separation or a child's ceasing to be covered as a dependent under plan rules.

Plan administrators, upon receiving notice of a qualifying event, must provide an election notice to the qualified beneficiaries of their right to elect COBRA coverage. The notice must be provided in person or by first class mail within 14 days after the plan administrator receives notice that a qualifying event has occurred.

There are two special exceptions to the notice requirements for multiemployer plans. First, the time frame for providing notices may be extended beyond the 14- and 30-day requirements if allowed by plan rules. Second, if the plan rules allow, employers may be relieved of the obligation to notify plan administrators when employees terminate or reduce their work hours. Plan administrators would then be responsible for determining whether these qualifying events have occurred.

Qualified beneficiaries who wish to take advantage of the 11-month disability extension must notify plan administrators of the disabled qualified beneficiary's Social Security disability determinations. A notice must be provided within 60 days of a disability determination and prior to expiration of the initial 18-month period of COBRA coverage. These beneficiaries also must notify the plan if the qualified beneficiary is determined by Social Security to be no longer disabled.

## Election

Qualified beneficiaries must be given an election period during which each qualified beneficiary may choose whether to elect COBRA coverage. Qualified beneficiaries must be given at least 60 days for the election. This period is measured from the later of the coverage loss date or the date the COBRA election notice is provided. COBRA coverage is retroactive if elected and paid for by the qualified beneficiary.

Each qualified beneficiary may independently elect COBRA coverage. A covered employee or the covered employee's spouse, however, may elect COBRA coverage on behalf of all other qualified beneficiaries. A parent or legal guardian may elect on behalf of a minor child.

If a qualified beneficiary waives COBRA coverage during the election period, he or she may revoke the waiver of coverage before the end of the election period. A beneficiary may then elect COBRA coverage. Then, the plan need only provide continuation coverage beginning on the date the waiver is revoked.

## How COBRA Coverage Works

**Example 1:**

John Q. participates in the group health plan maintained by the ABC Co. John is fired for a reason other than gross misconduct and his health coverage is terminated. If his employer properly notifies the plan administrator, John may elect a maximum of 18 months of COBRA coverage under the employer's group health plan. He may be required to pay a premium of up to 102 percent of the lost to the plan for the coverage. (See Paying for COBRA Coverage on page 15.)

**Example 2:**

Day laborer David P. has health coverage through his wife's plan sponsored by the XYZ Co. David loses his health coverage when he and his wife become divorced. David may elect COBRA coverage under the plan of his former wife's employer if he or his former wife notifies the plan administrator of the divorce not more than 60 days after it becomes final. Since in this case divorce is the qualifying event under COBRA, David is entitled to a maximum of 36 months of COBRA coverage.

**Example 3:**

RST, Inc. is a small business which maintained an insured group health plan for its 10 employees in 1997 and 1998. Mary H., a secretary with 6 years of service, leaves in June 1998 to take a position with a competing firm which has no health plan. She is not entitled to COBRA coverage with the plan of RST, Inc. since the firm had fewer than 20 employees in 1997 and is not subject to COBRA requirements.

## Covered Benefits

Qualified beneficiaries must be offered coverage identical to that available to similarily situated beneficiaries who are not receiving COBRA coverage under the plan (generally, the same coverage that the qualified beneficiary had immediately before qualifying for continuation coverage).

For example, a beneficiary may have had medical, hospitalization, dental, vision and prescription benefits under single or multiple plans maintained by the employer. Assuming a qualified beneficiary had been covered by three separate health plans of his former employer on the day preceding the qualifying event, that individual generally will have the right to elect to continue coverage in any or all of the three health plans.

A change in the benefits under the plan for active employees will also apply to qualified beneficiaries. Qualified beneficiaries must be allowed to make the same choices given to non-COBRA beneficiaries under the plan, such as during periods of open enrollment by the plan.

COBRA establishes required periods of coverage for continuation health benefits. A plan, however, may provide longer periods of coverage beyond those required by COBRA. COBRA beneficiaries generally are eligible for group coverage during a maximum of 18 months for qualifying events due to employment termination or reduction of hours of work. Certain qualifying events, or a second qualifying event during the initial period of coverage, may permit a beneficiary to receive a maximum of 36 months of coverage.

Coverage **begins** on the date that coverage would otherwise have been lost by reason of a qualifying event and will end at the end of the maximum period. It may end earlier if:

- Premiums are not paid on a timely basis

- The employer ceases to maintain any group health plan

- After the COBRA election, coverage is obtained with another employer group health plan that does not contain any exclusion or limitation with respect to any pre-existing condition of such beneficiary. However, if other group health coverage is obtained prior to the COBRA election, COBRA coverage may not be discontinued, even if the other coverage continues after the COBRA election.

- After the COBRA election, a beneficiary becomes entitled to Medicare benefits. However, if Medicare is obtained prior to COBRA election, COBRA coverage may not be discontinued, even if the other coverage continues after the COBRA election.

Special rules for disabled individuals and certain family members may extend the maximum periods of coverage. If a qualified beneficiary is determined under Title II or XVI of the Social Security Act to have been disabled within the first 60 days of COBRA coverage, then that qualified beneficiary and all of the qualified beneficiaries in his or her family may be able to extend COBRA

continuation coverage for up to an additional 11 months. However, qualified beneficiaries should be aware that they may lose all rights to the additional 11 months of coverage if notice of the determination is not provided within 60 days of the date of the determination and before the expiration of the 18-month COBRA continuation period. The qualified beneficiary who is disabled or any qualified beneficiaries in his or her family may notify the plan administrator of the determination.

Although COBRA specifies certain periods of time that continued health coverage must be offered to qualified beneficiaries, COBRA does not prohibit plans from offering continuation health coverage that goes beyond the COBRA periods.

Some plans allow participants and beneficiaries to convert group health coverage to an individual policy. If this option is available from the plan, you have the right to exercise the option under COBRA when you reach the end of your COBRA continuation coverage. The option must be given to enroll in a conversion health plan within 180 days before COBRA coverage ends. The premium for a conversion policy may be more expensive than the premium of a group plan, and the conversion policy may provide a lower level of coverage. The conversion option, however, is not available if the beneficiary ends COBRA coverage before reaching the end of the maximum period of COBRA coverage.

If you elect and exhaust COBRA continuation coverage, the Health Insurance Portability and Accountability Act (HIPAA) generally gives you the right to special enrollment in a spouse's plan for which you are otherwise eligible. However you must request enrollment within 30 days of the date your COBRA coverage ends. In addition, if you meet certain requirements, at the end of your COBRA continuation coverage, HIPAA gives you the right to buy individual health insurance coverage with no pre-existing condition exclusion. For more information on your right to buy individual health insurance coverage, contact your state department of insurance.

Beneficiaries may be required to pay for COBRA coverage. The premium cannot exceed 102 percent of the cost to the plan for similarly situated individuals who have not incurred a qualifying event, including both the portion paid by employees and any portion paid by the employer before the qualifying event, plus 2 percent for administrative costs.

For qualified beneficiaries receiving the 11 month disability extension of coverage, the premium for those additional months may be increased to 150 percent of the plan's total cost of coverage.

COBRA premiums may be increased if the costs to the plan increase but generally must be fixed in advance of each 12-month premium cycle. The plan must allow you to pay premiums on a monthly basis if you ask to do so, and the plan may allow you to make payments at other intervals (for example, weekly or quarterly).

The initial premium payment must be made within 45 days after the date of the COBRA election by the qualified beneficiary. Payment generally must cover the period of coverage from the date of COBRA election retroactive to the date of the loss of coverage due to the qualifying event. Premiums for successive periods of coverage are due on the date stated in the plan with a minimum 30-day grace period for payments. Payment is considered to be made on the date it is sent to the plan.

If premiums are not paid by the first day of the period of coverage, the plan has the option to cancel coverage until payment is received and then reinstate the coverage retroactively to the beginning of the period of coverage.

If the amount of the payment made to the plan is made in error but is not significantly less than the amount due, the plan is required to notify you of the deficiency and grant a reasonable period (for this purpose, 30 days is considered reasonable) to pay the difference. The plan is not obligated to send monthly premium notices.

COBRA beneficiaries remain subject to the rules of the plan and therefore must satisfy all costs related to copayments and deductibles, and are subject to catastrophic and other benefit limits.

## Claims Procedures

Health plan rules must explain how to obtain benefits and must include written procedures for processing claims. Claims procedures must be described in the SPD.

You should submit a claim for benefits in accordance with the plan's rules for filing claims. If the claim is denied, you must be given notice of the denial in writing generally within 90 days after the claim is filed. The notice should state the reasons for the denial, any additional information needed to support the claim, and procedures for appealing the denial.

You will have at least 60 days to appeal a denial and you must receive a decision on the appeal generally within 60 days after that.

Contact the plan administrator for more information on filing a claim for benefits. Complete plan rules are available from employers or benefits offices. There can be charges up to 25 cents a page for copies of plan rules.

The Family and Medical Leave Act (FMLA), effective August 5, 1993, requires an employer to maintain coverage under any "group health plan" for an employee on FMLA leave under the same conditions coverage would have been provided if the employee had continued working. Coverage provided under the **FMLA is not COBRA coverage**, and FMLA leave is not a qualifying event under COBRA. A COBRA qualifying event may occur, however, when an employer's obligation to maintain health benefits under FMLA ceases, such as when an employee notifies an employer of his or her intent not to return to work.

Further information on FMLA is available from the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration.

## Role of the Federal Government

COBRA continuation coverage laws are administered by several agencies. The Departments of Labor and Treasury have jurisdiction over private-sector health group health plans. The Department of Health and Human Services administers the continuation coverage law as it affects public-sector health plans.

The Labor Department's interpretive and regulatory responsibility is limited to the disclosure and notification requirements of COBRA. If you need further information on your disclosure or notification rights under a private-sector plan, or about ERISA generally, write to the nearest office of the Pension and Welfare Benefits Administration. Consult the "U.S. Government, U.S. Department of Labor" listing in your telephone directory for the office nearest you or call toll free 1-866-275-7922 and request a list of PWBA Regional Offices. Or write to:

**U.S. Department of Labor**
**Pension and Welfare Benefits Administration**
**Division of Technical Assistance and Inquiries**
**Room N-5619**
**200 Constitution Ave., N.W.**
**Washington, D.C. 20210**

You may also consult the agency's Web site at **www.dol.gov/pwba**

For information about COBRA and HIPAA (mentioned on pgs. 3 and 14) visit the Web site above and click on **Publications/Reports,** then ***Questions and Answers: Recent Changes in Health Care Law.***

The Internal Revenue Service, Department of the Treasury, has issued regulations on COBRA provisions relating to eligibility, coverage and premiums in 26 CFR Part 54, "Continuation Coverage Requirements Applicable to Group Health Plans." Both the Departments of Labor and Treasury share jurisdiction for enforcement of these provisions.

The Centers for Medicare and Medicaid Services offer information about COBRA provisions for public-sector employees. You can write them at this address:

**Centers for Medicare and Medicaid Services**
**Attn: COBRA**
**Mail Stop S3-16-16**
**7500 Security Boulevard**
**Baltimore, MD 21244-1850**

Federal employees are covered by a law similar to COBRA. Those employees should contact the personnel office serving their agency for more information on temporary extensions of health benefits.

## Conclusion

Rising medical costs have transformed health benefits from a privilege to a household necessity for most Americans. COBRA creates an opportunity for persons to retain this important benefit.

Workers need to be aware of changes in health care laws to preserve their benefit rights. A good starting point is reading your summary plan description (SPD) booklet. Most of the specific rules on COBRA rights can be found there or with the person who manages your health benefits plan.

Be sure to contact the health plan periodically to find out about any changes in the type or level of benefits offered by the plan.